

BEFORE THE STATE BOARD OF EQUALIZATION
ASSESSMENT APPEALS COMMISSION

Appeal of:	ABG CAULKING CONTRACTORS, INC.)	
	Personalty Acct. No. 085868)	Davidson
	Commercial Property)	County
	Tax Year 2004)	

FINAL DECISION AND ORDER

Statement of the case

This is an appeal by the taxpayer from the initial decision and order of the administrative judge who determined the State Board lacked jurisdiction to hear the appeal because the taxpayer failed to first appeal to the Metro Nashville Board of Equalization. The appeal was heard in Nashville on December 14, 2005 before Commission members Gilliam (presiding), Brooks, Wade and White,¹ sitting with an administrative judge other than the judge who heard the matter initially. Mr. Arles B. Greene, president of ABG, appeared on behalf of the company, and the assessor of property was represented by Assistant Metro Attorney Margaret Darby.

Findings of fact and conclusions of law

Tangible personal property used in a business is assessable for property taxes in Tennessee on the basis of a schedule filed by the taxpayer with the local assessor of property. The taxpayer reports acquisition costs on the schedule and depreciation is deducted on a straight line basis using useful lives prescribed by state law for various categories of property, in the absence of better evidence of value. If the taxpayer fails to file the schedule, the assessor values the property using the best information available, sends notice of the "forced assessment" to the taxpayer, and the taxpayer must appeal the assessment to the county board of equalization or accept it as final.

Mr. Greene relied on his accountant to take care of these matters, but when the schedule was due in 2004 the accountant's National Guard unit had been activated and in the press of business no personalty schedule was filed. Further, Mr. Greene failed to appeal to the county board of equalization despite being sent a notice of the forced assessment which explained the consequences of failing to appeal. The administrative judge convened a hearing to determine whether reasonable cause existed to legally excuse the failure to appeal to the county board, pursuant to Tenn. Code Ann. §67-5-1412 (e), but the judge concluded Mr. Greene had failed to demonstrate reasonable cause, often interpreted to mean "circumstances beyond the control of the taxpayer."

¹Mr. Gilliam and Mr. Wade sat as alternates in the absence of regular members who were unavailable, pursuant to Tenn. Code Ann. §4-5-302.

Mr. Greene has been forthright in describing his plight, and the tax consequences of his error are severe: the forced assessment for 2004 yields a tax bill of \$22,731.46 versus a likely bill of about \$9,000 had the schedule been properly filed. Unfortunately these circumstances were plainly not beyond the taxpayer's control. Moreover, the account was force assessed for the three previous years, and we must conclude the primary cause of the excessive assessment is neglect by the taxpayer's agent or employee, which we do not find to be beyond the taxpayer's control.

ORDER

It is therefore ORDERED, that the initial decision and order of the administrative judge is affirmed. This order is subject to:

1. Reconsideration by the Commission, in the Commission's discretion.

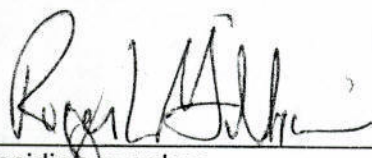
Reconsideration must be requested in writing, stating specific grounds for relief and the request must be filed with the Executive Secretary of the State Board within fifteen (15) days from the date of this order.

2. Review by the State Board of Equalization, in the Board's discretion. This review must be requested in writing, state specific grounds for relief, and be filed with the Executive Secretary of the State Board within fifteen (15) days from the date of this order.

3. Review by the Chancery Court of Davidson County or other venue as provided by law. A petition must be filed within sixty (60) days from the date of the official assessment certificate which will be issued when this matter has become final.

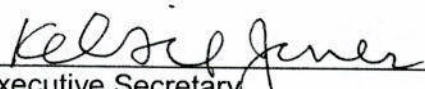
Requests for stay of effectiveness will not be accepted.

DATED: May 11, 2006



Presiding member

ATTEST:



Executive Secretary

cc: Mr. Arles B. Greene
Ms. Margaret Darby, Metro Dept. of Law